

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA,	§	
Plaintiff/Respondent,	§	
	§	
V.	§	CR. No. C-05-542
	§	C.A. No. C-08-202
DELVIN DEMON MOORE,	§	
Defendant/Movant.	§	

**ORDER DENYING MOTION
TO PROCEED *IN FORMA PAUPERIS* ON APPEAL**

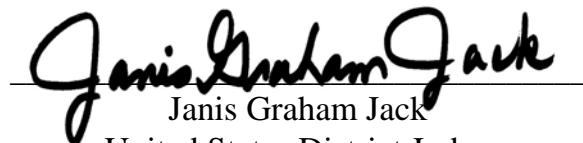
Delvin Demon Moore’s (“Moore”) motion pursuant to 28 U.S.C. § 2255 is currently pending before the Court, and briefing on that motion was completed on January 23, 2009, when the Clerk received Moore’s reply to the government’s response. On January 16, 2009, the Clerk received from Moore a motion to proceed *in forma pauperis* (D.E. 555), pending before the Court and addressed herein.

Previously, Moore filed two separate notices of appeal, both of which purported to appeal from the alleged denial of his § 2255 motion. (D.E. 545, 547.) As noted in the Court’s order denying his request for counsel on appeal (D.E. 549), Moore’s notices of appeal are premature and his appeal is frivolous, since the Court has not yet ruled on his § 2255 motion. For this reason, the Court hereby certifies, pursuant to Fed. R. App. P. 24(a)(3), that Moore’s appeal is not taken in good faith. Thus, he shall not be permitted to proceed on appeal *in forma pauperis*. Accordingly, to the extent that Moore seeks *in forma pauperis* status on appeal, it is denied. He is advised, however, that he may nonetheless file a motion in the Court of Appeals to proceed on appeal *in forma pauperis* within 30 days after service of this Order. See Fed. R. App. P. 24(a)(5).

Additionally, to the extent that Moore’s *in forma pauperis* application was intended to seek leave to proceed *ifp* in his § 2255 proceedings still pending before this Court, it is unnecessary. That

is, for purposes of filing fees a motion filed under 28 U.S.C. § 2255 is essentially a continuation of the defendant's criminal case. See United States v. Cole, 101 F.3d 1076 (5th Cir. 1996) (characterizing § 2255 motion and indicating that it is not a civil action for purposes of the Prison Litigation Reform Act). In this district, no filing fee is required to file such a motion. To the extent it was intended as a motion to proceed *in forma pauperis* in these proceedings, therefore, Moore's motion is DENIED AS MOOT.

It is so ORDERED this 26th day of January, 2009.



Janis Graham Jack
United States District Judge